



Indiana Department of Environmental Management
Office of Air Quality
Rule Fact Sheet
March 7, 2001

READoption OF RULES IN TITLE 326 UNDER IC 13-14-9.5
LSA Document # (00-44)

Overview

This rulemaking is required pursuant to IC 13-14-9.5, which provides for the expiration and readoption of administrative rules.

IDEM held two outreach meetings prior to the printing of the First Notice of Comment Period to explain to interested parties how the department was proceeding with this rulemaking.

Citations Affected

Amends: 326 IAC 4-2, 326 IAC 9-1.
Opens: 326 IAC 1-6, 326 IAC 8-7,
326 IAC 8-9, 326 IAC 8-11, and
326 IAC 18-2.
Repeals: 326 IAC 19-1.

Description

This rulemaking is required pursuant to IC 13-14-9.5, which provides for the expiration and readoption of all administrative rules. A rule that was adopted under a provision of IC 13 and was in effect on December 31, 1995, expires not later than January 1, 2002. All rules adopted after that date under IC 13-14-9, with some exceptions noted, expire on January 1 of the seventh year after the year in which each rule takes effect. The First Notice of Comment Period and Continuation of First Notice of Comment Period opened ninety-three rules in Title 326 for readoption. Twenty-four rules that incorporate a federal regulation by reference without significant changes are exempted from IC 13-14-9.5.

Affected Persons

All sources affected by Title 326, and the public.

Potential Cost

Low. This rulemaking readopts as currently written all of the affected rules except 326 IAC 4-2 (incinerators), 326 IAC 9-1 (carbon monoxide emission limits), and 326 IAC 19-1 (employee commute options). The only potential cost would be associated with amendments to 326 IAC 9-1, which add a requirement to maintain a minimum temperature in an afterburner or boiler. This amendment may require affected sources to purchase a portable thermometer, but cost estimates are less than \$200.

Of the ninety-three rules opened, fifty-one rules did not receive comments during the first comment period. Pursuant to IC 13-14-9.5-4(c), these rules were submitted to the secretary of state for readoption as written and were filed on January 10, 2001.

Outreach

Under IC 13-14-9.5-4(b), any person may submit a written request and a basis for the request during the first comment period that a rule be readopted separately. If such a request is made, the department is required to follow the full rule promulgation process for adoption of those rules. The department received comments (requests) on the remaining forty-two rules opened for readoption.

The list of rules commented upon was analyzed to determine those rules not amended since 1995. Eleven rules were determined to be ones that would expire December 31, 2001, therefore the first to start the promulgation process.

This rulemaking includes eight rules that received comment in the first comment period and are due to expire on December 31, 2001. Comments received for three other rules, 326 IAC 2-6 (emission reporting), 326 IAC 6-3 (process weight rate) and 326 IAC 6-4 (fugitive dust), are being addressed in other rulemakings currently in process and expected to be promulgated by the end of the year. These rules are tentatively scheduled for preliminary adoption at the April board meeting.

326 IAC 1-6 (malfunctions), 326 IAC 8-7 (VOC Reductions in Lake, Porter, Clark, and Floyd counties), 326 IAC 8-9 (volatile organic liquid storage vessels), 326 IAC 8-11 (wood furniture coatings), and 326 IAC 18-2 (asbestos training courses) did not receive any comments or recommendation for language changes during the second comment period. These rules are being recommended for readoption as currently written. 326 IAC 19-1 (Employee commute option) was originally required by Section 182(d)(1)(B) of the Clean Air Act (Act), but in December 1995, Congress amended the Act to allow states to

withdraw this program from their state implementation plans.

IDEM has not implemented the program and therefore is repealing the rule.

The remaining thirty-one rules will be brought to the board at a later date since they will not expire until after January 1, 2003 or later. Rules will be brought to the board on an on-going basis according to the schedule on which they must be readopted or expire.

In response to comments, the department is proposing to amend 326 IAC 4-2 and 326 IAC 9-1. Both rules regulate incinerators. 326 IAC 4-2 regulates particulate matter emissions while 326 IAC 9-1 regulates carbon monoxide emissions.

326 IAC 4-2-2(a)(7) contains unnecessary, outdated, and unenforceable language. Subdivision (7) states "all incinerators shall be operated so that emissions of hazardous material including, but not limited to, viable pathogenic bacteria, dangerous chemicals or gases, or noxious odors are prevented". The terms "hazardous materials" and "dangerous chemicals" are no longer defined. If the incinerator is operated and maintained properly, viable pathogenic bacteria emissions will not occur. If a source complies with the rest of the rule, then the source also complies with the intent of subdivision (7). In addition, hazardous air pollutants for incinerators are regulated by 40 CFR 63, the National Emission Standards for Hazardous Air Pollutants (NESHAP) and 326 IAC 11. Therefore, it is proposed that subdivision (7) be deleted.

Many incinerators are subject to federal as well as state particulate emission regulations. 326 IAC 4-2-2(b) specifically addresses particulate emission limitations for incinerators and is proposed to clarify that sources are

required to comply with only the more stringent requirement (326 IAC 4-2-2(a), 326 IAC 11, 326 IAC 20, 40 CFR 60, 40 CFR 62, and 40 CFR 63). 326 IAC 11 contains rules for sources existing before a specific date. 326 IAC 20 incorporates by reference federal regulations and in some instances additional state requirements. 40 CFR 60 contains the federal New Source Performance Standards (NSPS). 40 CFR 62 contains state implementation plans for specific facilities and federal implementation plans for solid waste combustion units that are not included in a state implementation plan. In order to ease duplication and record keeping burdens, a source must comply with only the most stringent applicable requirement.

326 IAC 9-1 addresses carbon monoxide emissions for incinerators and contains control requirements to limit carbon monoxide emissions. 326 IAC 11, 326 IAC 20, 40 CFR 60, 40 CFR 62, and 40 CFR 63 contain carbon monoxide emission limits. The control requirements in 326 IAC 9-1-2 and carbon monoxide emission limits in the other rules are not directly comparable. The department proposes to amend 326 IAC 9-1-2 so that sources subject to a carbon monoxide emission limit under 326 IAC 11, 326 IAC 20, 40 CFR 60, 40 CFR 62, or 40 CFR 63 are exempt from 326 IAC 9-1-2.

Additionally under 326 IAC 9-1-2, the department added a minimum temperature requirement of one thousand three hundred (1,300) degrees Fahrenheit for a minimum of three-tenths (0.3) second for afterburners or boilers to ensure that the afterburners are working properly. This temperature requirement is only for the waste gas stream. This temperature requirement ensures a more complete burn of the waste gas stream and less carbon monoxide emissions. This temperature

requirement is the current minimum permit standard in Office of Air Quality (OAQ) and is consistent with rules in other states.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could be reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- 7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
 - (A) human, plant animal, or aquatic life; or
 - (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

The amended rules are consistent with federal rules and guidance.

IDEM Contact

Additional information regarding this rule making action can be obtained by calling (800) 451-6027 (in Indiana), press 0 and ask for Suzanne Whitmer, Rule Development Section, Office of Air Quality, or extension 2-8229 or dial (317) 232-8229.